

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20556
[REDACTED],)	
)	DECISION
Petitioners.)	
_____)	

On May 9, 2006, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (petitioners) proposing additional income tax, penalty, and interest for tax year 2003 in the total amount of \$397.

On July 10, 2006, a timely protest and petition for redetermination was filed by the petitioners. The petitioners have not requested a hearing. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NOD.

The petitioners were issued a NOD by the Commission [Redacted]. [Redacted] The TDB, therefore, issued a NOD based on that information and adjusted the petitioners' Idaho return. The Commission finds that the TDB correctly recomputed the petitioners' tax liability [Redacted].

[Redacted].

Idaho state withholding requirements for employers are based on federal withholding requirements. (Idaho Code Section 63-3035.) In a United States Tax Court decision that deals with a federal income tax withholding issue identical to the case at hand, the Tax Court stated in part:

An employer is required under section 3402(a) to withhold Federal income tax from the wages of its employees.

Section 31(a) allows an employee to take a credit for amounts withheld by his employer and apply it to his tax due. The taxpayer is entitled to this credit even if the employer has not paid the withholdings over to the Government. Sec.1.31-1(a), Income Tax Regs. But if the employer does not actually withhold the tax, the employee is not entitled to a credit for amounts which should have properly been withheld. Edwards v. Commissioner, 39 T.C. 78,84 (1962), aff'd, on this issue 323 F.2d 751 (9th Cir.1963). The failure of an employer to withhold income tax does not relieve the employee's obligation to pay the tax. Church v. Commissioner, 810 F.2d 19, 20 (2d Cir.1987). . . the employee remains ultimately liable for his own taxes even though his employer was obligated to withhold.

The petitioners have shown no proof that any income taxes were ever withheld for the year in question.

On October 18, 2007, the Tax Policy Specialist (policy specialist) sent the petitioners a letter to inform them of the alternatives for redetermining a protested NOD. A follow-up letter was sent to the petitioners on December 5, 2007. The petitioners did not respond to either letter.

Idaho Code § 63-3002 states that it is the intent of the Idaho Legislature insofar as possible to make the Idaho Income Tax Code identical to the Internal Revenue Code in the way taxable income is determined. Idaho Code § 63-3069 states that, upon a final determination of any deficiency or refund of federal taxes, written notice shall be immediately sent to the State Tax Commission by a taxpayer. IDAPA 35.01.01.890.03 Income Tax Administrative Rule states that immediate written notification is required within 60 days of the final determination.

From the cited Idaho Code sections and the Administrative Rule, it is apparent the Idaho

legislature intended any changes made to a taxpayer's federal return to be reflected on the taxpayer's Idaho return. Therefore, it is the Commission's position that the changes made to the taxpayer's federal return must be made to the taxpayer's state return.

Following the Idaho Code, the adjustments should be made to the petitioners' Idaho income tax return. The petitioners have the burden of proving the adjustments were incorrect. The petitioners would like the Commission to re-audit [Redacted]. The Commission's position is the petitioners must be granted relief at the federal level before relief can be granted at the state level. The petitioners have failed to carry the burden in this matter.

Since the petitioners have not provided the Commission with a contrary result [Redacted], the Commission must uphold the deficiency as asserted.

WHEREFORE, the Notice of Deficiency Determination dated May 9, 2006, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that petitioners pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$335	\$17	\$88	\$440

Interest is calculated through May 28, 2008.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioners' right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this ____ day of _____, 2008, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.